

*Tenn. Wash. D.C.***DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548****FILE:** B-206520**DATE:** November 5, 1982**MATTER OF:** R. Christopher Goodwin & Associates  
and GeoScience Inc.**DIGEST:**

Evaluation of competitors for architect-engineer services contract is not arbitrary or unreasonable where evaluation is based upon evaluation criteria published in Commerce Business Daily announcement which invited interested firms to submit for evaluation information outlining credentials to do the work. Agency Selection Board properly considered prior experience and work as subcontractor on first phase of project. Furthermore, GAO review of awardee's proposed project team members' credentials shows that evaluation criteria were applied and evaluated by Selection Board.

R. Christopher Goodwin & Associates and GeoScience Inc. (hereinafter collectively referred to as Goodwin) jointly protest against the Navy's award of architect-engineer (A-E) contract No. N62470-82-B-7788 to Ecology and Environment, Inc. (Ecology), to perform a cultural resource survey of the Island of Vieques. The invitation called for providing A-E services to perform prehistoric and historic investigation and evaluation of approximately 5,775 hectares of Navy land on the Island of Vieques, Commonwealth of Puerto Rico, pursuant to the provisions of an order of the United States District Court for the District of Puerto Rico which resolved earlier litigation between Puerto Rico and the United States.

We deny the protest.

Goodwin contends the Navy's Selection Board did not follow the evaluation criteria which were published in the Commerce Business Daily and which had been set forth in a memorandum of understanding between the Navy and Puerto Rico in the earlier litigation before the

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United States District Court. Goodwin also charges that, since Ecology has had recent contracts with the Atlantic Division and performed work on the first phase of this cultural resource survey, the Navy did not take into consideration its stated objective of effecting equitable distribution of A-E contracts among qualified firms.

The Brooks Act, 40 U.S.C. § 541 et seq. (1976), states the Federal Government's policy in the procurement of A-E services. Generally, the selection procedures prescribed require a contracting agency to publicly announce requirements for A-E services. The contracting agency then evaluates A-E statements of qualifications and performance data already on file and statements submitted by other firms in response to the public announcement. Thereafter, discussions must be held with "no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach" for providing the services requested. Based on established and published criteria, which are not to relate either directly or indirectly to the fees to be paid the firm, the contracting agency then ranks in order of preference no less than three firms deemed most highly qualified. Negotiations are held with the A-E firm ranked first. Only if the agency is unable to agree with the firm as to a fair and reasonable price are negotiations terminated and the second ranked firm invited to submit its proposed fee.

The Atlantic Division, Naval Facilities Engineering Command, announced its intention to contract for these A-E services in the Commerce Business Daily and invited all interested qualified firms to submit Standard Forms 254 and 255 outlining their qualifications for the project. The Commerce Business Daily notice described the project and, with regard to qualifications and evaluation of possible contractors, stated:

\*\* \* \* Consideration will be given only to firms with demonstrated knowledge, expertise, and experience in cultural resource investigation in the

Caribbean, with emphasis on Puerto Rico and the Island of Vieques. All survey, evaluations, data recovery, etc. must be directed by a person or persons who meet at a minimum the appropriate professional qualifications as delineated in 36 CFR Part 1210, Appendix C. The Principal Investigator(s) are also required to be bilingual (Spanish and English). \* \* \* Specific evaluation factors shall include: (1) Specialized experience of the firm in the type of work required; (2) Professional capacity of the firm to accomplish the contemplated work within the required time limits; (3) Professional qualifications of staff to be assigned to this project; (4) Past experience, if any, of the firm with respect to performance on Department of Defense contracts; and (5) Volume of work previously awarded to the firm by the Atlantic Division with the objective of effecting equitable distribution of contracts among qualified A&E firms including minority firms and firms that have not had prior Atlantic Division contracts."

Goodwin charges that Ecology does not have the requisite "demonstrated knowledge, expertise, and experience in cultural resource investigation in the Caribbean." Goodwin's protest focuses on the qualifications of the individual which Ecology has chosen as its Principal Investigator. Goodwin contends that Ecology's Principal Investigator does not meet the qualifications set forth in the Commerce Business Daily announcement. Furthermore, Goodwin asserts that it offered a project team which was far superior to that offered by Ecology.

The Navy reports that 12 firms responded to the Commerce Business Daily announcement and that the Pre-Selection Board, using the stated evaluation criteria, recommended four firms as best qualified. Ecology was ranked most qualified while Goodwin was ranked fourth.

After interviews were conducted with representatives of all four firms, the members of the Selection Board voted by "secret ballot" and recommended that Ecology be selected for negotiation of a contract. The Navy reports that Ecology was selected because it provided evidence of successful past experience with similar Navy projects and other agencies; it had extensive experience in the Caribbean, particularly on the Island of Vieques; and it was able to begin work by March 1, 1982, as ordered by the District Court. The Selection Board was also satisfied with the personnel Ecology offered in its team.

The Navy contends that Goodwin has not demonstrated that the Selection Board failed to comply with the selection criteria. In the Navy's view, Goodwin's protest is merely a difference of opinion between Goodwin and the Selection Board. Goodwin, however, wants our Office to make a "side by side comparison" between Goodwin's and Ecology's proposed project teams using the selection criteria set forth in the Commerce Business Daily announcement.

Our review of the agency selection of an A-E contractor is limited to examining whether that selection is reasonable. We will question the agency's judgment only if it is shown to be arbitrary. Leyendecker & Cavazos, B-194762, September 24, 1979, 79-2 CPD 217. In this regard, it must be remembered that the protester bears the burden of affirmatively proving its case. ACMAT Corporation, B-197589, March 18, 1981, 81-1 CPD 206.

We are unable to conclude that the Navy's selection of Ecology was arbitrary or unreasonable or unrelated to the published evaluation criteria.

Concerning the equitable distribution of A-E contracts by the Atlantic Division, our examination of the record shows that this factor was considered by the Selection Board. According to the Navy, Ecology had been awarded contracts totaling only \$76,000 in calendar year 1981. The Selection Board specifically noted this fact and the fact that none of the four top-rated firms had received awards totaling over

\$200,000 from the Atlantic Division in calendar year 1982. However, this factor was only one of five to be used in the evaluation and, apparently, because of the small dollar amount involved in the 1981 contract, did not persuade the Selection Board to award to other than Ecology. Goodwin contends that Ecology should have been excluded from consideration because it had done work on the first phase of the Vieques cultural resource survey. We note that, in fact, Ecology had done this work as a subcontractor to the prime contractor. Accordingly, there was no contract between the Atlantic Division and Ecology. We also point out that the published criteria stated that previous contracts would be considered but did not provide for excluding an offeror just because it had worked with the Atlantic Division previously. Therefore, we cannot find that the Navy's award to Ecology in spite of prior contracts violated the stated policy of effecting equitable distribution among contractors.

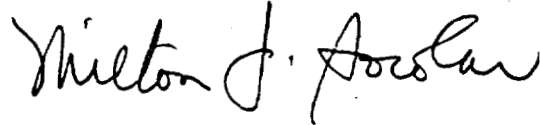
Concerning Goodwin's assertion that it offered a project team with credentials far superior to the credentials of Ecology's project team, we point out that it is not the function of our Office to make our own determination of the relative merits of the submissions of A-E firms in response to an agency request therefor. The procuring officials enjoy a reasonable degree of discretion in evaluating such submissions and we will not substitute our judgment for that of the procuring agency by making an independent examination. See Centurion Films, Inc., B-205570, March 25, 1982, 82-1 CPD 285. As previously stated, our review will be limited to determining if the Navy's selection was arbitrary, unreasonable or did not follow the published evaluation criteria.

We have examined the Standard Form 255--outlining Ecology's project team and individual team members' credentials--and the Selection Board's records pertaining to this selection. We are unable to conclude that the selection of Ecology was without a reasonable basis or that the Selection Board failed to consider the published evaluation criteria. The Selection Board was apparently greatly impressed by Ecology's prior experience and successful performance on similar projects for

the Navy, the Department of Defense and other agencies. Such past experience is directly addressed in evaluation factor 4. Furthermore, successful prior experience is reasonably related to selection criterion 2 (professional capacity of the firm to do the required work on time) and selection criterion 3 (professional qualifications of the project team members). Moreover, Ecology's prior work as a subcontractor on the first phase of the Vieques cultural resources survey apparently led to a higher rating for Ecology's team and this was specifically in harmony with selection criterion 1--specialized experience of the firm in the type of work required.

The Principal Investigator offered by Ecology was very well qualified with 36 years of experience--much of it in "research, field survey, site testing and excavation, and impact assessment of cultural resources for numerous islands in the Caribbean." In fact, this individual had worked on the first phase of this project. Moreover, the record shows that he had bachelor's and master's degrees in anthropology at the time of the evaluation, with an expectation of receiving a doctorate in anthropology shortly after contract award. The Commerce Business Daily announcement indicated that the Principal Investigator must meet the criteria set out in 36 Code of Federal Regulations (C.F.R.), Part 1210, Appendix C (now 36 C.F.R. § 61.5 (1981)), which merely requires a graduate degree in anthropology or a closely related field. Furthermore, the Principal Investigator offered by Ecology is bilingual (Spanish and English) as required in the Commerce Business Daily announcement. In this connection, we note that there was no requirement that more than one member of the team be bilingual as asserted by Goodwin. Based upon the above, we conclude that the Selection Board's decision was reasonable and that the evaluation criteria were properly applied. Even though Goodwin charges that it offered a far superior team, its opinion does not carry more weight than the opinion of the Selection Board and, in view of the burden of

proof that a protester must carry, does not provide a basis to invalidate the award to Ecology. See Centurion Films, Inc., supra.

A handwritten signature in cursive script, reading "Milton J. Aroskar".

Acting Comptroller General  
of the United States